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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 **IN RE: BARD IVC FILTERS**
10 **PRODUCTS LIABILITY LITIGATION**

MDL No. 15-2641

11 **This Order Relates to: All Actions**
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13 Having reviewed the parties' briefing on Plaintiffs' motion to compel (Docs. 1214,
14 1476, 1590, 1976), the Court needs additional factual information to resolve the choice of
15 law issue. The Court will allow the parties to submit additional evidence and targeted
16 legal briefing. The Court will hear oral arguments at the upcoming case management
17 conference. In an attempt to narrow the issues, the Court will provide the parties with
18 several preliminary conclusions. The Court will list several issues the parties should
19 address in their memoranda.

20 The parties agree on fundamental issues. Both sides agree that state privilege law
21 controls. Docs. 1476 at 5; 1590 at 2. Both sides agree that the Court should follow *In re*
22 *Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability*
23 *Litigation*, MDL No. 2100, 2011 WL 1375011 (S.D. Ill. Apr. 12, 2011). Docs. 1476 at 5-
24 6; 1590 at 2. Both sides agree that, as in *In re Yasmin*, the Court should determine which
25 state's privilege law controls by applying the most significant relationship test found in
26 Restatement (Second) of Conflict of Laws § 139. Docs. 1476 at 6; 1590 at 2. The parties
27 disagree, however, on which state has the most significant relationship to the
28 communications at issue.

1 The parties should address the following issues in their memoranda, providing
2 factual and evidentiary support for their assertions:

3 1. The factors identified in comment e to Section 139. These include at least
4 the following:

5 a. If there was a prior relationship between the attorneys and clients,
6 where it was based?

7 b. Where relevant oral attorney-client communications took place.

8 c. Where relevant written attorney-client communications were
9 received.

10 d. Where any relevant inspection occurred.

11 2. Whether A.R.S. § 12-2234 constitutes a “strong public policy of the forum”
12 for purposes of Section 139(1).

13 3. Any relevant case law applying the comment e factors.

14 4. Any other factual information or legal arguments the parties wish to
15 address.

16 **IT IS ORDERED:**

17 1. The parties shall file simultaneous eight-page memoranda addressing these
18 issues no later than **12:00 noon on June 20, 2016**.

19 2. The Court will hear oral arguments on the choice of law issues during the
20 June 21, 2016 case management conference.

21 Dated this 13th day of June, 2016.

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David G. Campbell
26 United States District Judge
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